



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,500	10/24/2003	Peter W. Carhuff	88265-7670	1144
28765	7590	07/27/2006	EXAMINER	
WINSTON & STRAWN LLP			MARKOFF, ALEXANDER	
1700 K STREET, N.W.			ART UNIT	
WASHINGTON, DC 20006			PAPER NUMBER	

1746

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,500

Applicant(s)

CARHUFF ET AL.

Examiner

Alexander Markoff

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/18/06.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23,29-39 and 42-61 is/are pending in the application.
4a) Of the above claim(s) 33 and 38 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 23,29-32,34-37,39 and 42-61 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 23, 29-32, 34-37, 39 and 42-61 in the reply filed on 5/18/06 is acknowledged.
2. Claims 33 and 38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/18/06.

Information Disclosure Statement

3. The applicants filed copies of EP 0245641 and GB 2367105 and requested consideration of these documents. This is not a proper way to file an IDS.
4. The information disclosure statement filed 2/28/06 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

5. The information disclosure statement filed 2/28/06 fails to comply with 37 CFR 1.97(c) because it lacks a statement as specified in 37 CFR 1.97(e) or the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 23, 29-32, 34-37, 39 and 42-61 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The applicants amended the claims to recite a protein-containing food product.

The applicants also amended the claims to recite the temperature above 75 degrees.

None of these concepts is disclosed by the original disclosure.

8. Claims 23, 29-32, 34-37, 39 and 42-61 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the specific food products, does not reasonably provide enablement for a non-specified protein-

containing food product. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims. The specification is directed only to specific food products and provide no guidance regarding other non-specified food products. Thereby an ordinary artisan would not be able to practice the claimed invention without undue experimentation..

Claim Rejections - 35 USC § 102 & 103

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

Art Unit: 1746

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claim 58 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mirabile (US Patent No 5,762,096, which incorporates US Patent No 4,527,585).

Mirabile teaches a method comprising the claimed manipulative steps. See entire document and incorporated patent, especially column 1 and column 4, line 20 – column 7, line 41.

Mirabile does not specifically states that cleaning is conducted several times per day. However, since Mirabile teaches conducting cleaning in off-hours and any desired or needed time it is believed that that the cleaning is conducted more than ones per day in the conventional operations.

On the other hand, it would have been obvious to an ordinary artisan at the time the invention was made to conduct the cleaning at any time when required by operation

Art Unit: 1746

conditions recited by Mirabile, such as for example unacceptable foaming due to freezing or contamination .

14. Claims 23, 29-32, 34-36 and 48-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee.

Lee teaches the claimed method except for specific recitation of velocity of cleaning fluid, temperature of water, and duration of cleaning.

See entire document, especially column 3, line 48 – column 7, line 23.

As to the temperature of water: the cited documents teach the use of hot water. The scope of the term “hot water” comprises the water of the claimed temperature. It would have been obvious to an ordinary artisan at the time the invention was made to find an optimum temperature of the hot water by routine experimentation in order to ensure the cleaning and sanitizing of the dispensers.

As to the fluid velocity and duration of cleaning:

These parameters are result effective variables. It would have been obvious to find optimum values of the result effective variables by routine experimentation in order to enhance cleaning and ensure desired level of cleaning.

15. Claims 23, 29-39, 42-57 and 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mirabile.

Mirabile teaches the claimed method except for specific recitation of velocity of cleaning fluid, temperature of water, and duration of cleaning.

As to the temperature of water: the cited documents teach the use of hot water. The scope of the term "hot water" comprises the water of the claimed temperature. It would have been obvious to an ordinary artisan at the time the invention was made to find an optimum temperature of the hot water by routine experimentation in order to ensure the cleaning and sanitizing of the dispensers.

As to the fluid velocity and duration of cleaning:

These parameters are result effective variables. It would have been obvious to find optimum values of the result effective variables by routine experimentation in order to enhance cleaning and ensure desired level of cleaning.

Response to Arguments

16. Applicant's arguments filed 2/28/06 and 5/18/06 have been fully considered but they are not persuasive.

The applicants argue that Lee only teaches a visual indicator to start cleaning. This is not persuasive because Lee teaches a time-based program to conduct cleaning. See at least column 4, line 66 – column 7, line 16.

The applicants argue that in Lee the optical detection can lead to hazardous issue.

This is not persuasive. Whether or not the applicants correct about deficiencies of the method of the prior art, the pending claims are obvious over the prior art.

The applicants argue that Mirabile requires disconnecting during cleaning, that sanitizing is conducted not by hot water, and that the invention of the instant application is more effective.

The arguments are not persuasive because in contrast to the applicants statement Mirabile teaches embodiments, which do not require disconnecting. Moreover, the claims do not exclude disconnecting.

Also, since the hot water is used, it sanitize the apparatus at least to some extend.

Further, whether or not the invention of the instant application is more effective, the unsupported statement regarding the efficiency of the method is not sufficient to overcome the rejection, when the claimed steps are anticipated or obvious over the prior art.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1746

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 571-272-1304. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alexander Markoff
Primary Examiner
Art Unit 1746

AM